

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOHNATHAN CRAFT, et. al.,

Defendant.

Case No. **19-cr-1631-DHU**

**JOHNATHAN CRAFT'S RESPONSE IN OPPOSITION TO THE
GOVERNMENT'S CONDITIONAL MOTION TO SEVER COUNTS 11 AND 12**

Defendant Johnathan Craft, by and through his undersigned counsel, files this response in opposition to the government's "conditional" motion to sever counts 11 and 12 (Doc 549) of its last-minute second superseding indictment (Doc. 530). Mr. Craft requests that the Court deny the motion to sever and dismiss counts 11 and 12 which eleventh-hour prosecution demonstrate both a vindictive and selective prosecution of Mr. Craft by the government. Additionally, given the government's representations that counts 11 and 12 are based upon the "same evidence" as the other counts in the indictment, any subsequent prosecution would violate the prohibition against double jeopardy under the 5th Amendment of the Constitution of the United States.

On May 11, 2023, after five prior trial settings and the passage of three years and 10 months since Mr. Craft was arrested in June of 2019, the government charged two new felony offenses purportedly based on the "same evidence" the government possessed for four years.

Despite emphatic claims by Assistant United States' Attorney Letitia Simms to the Court that she did not want any delay in the current trial setting, Ms. Simms proceeded to "strengthen" her case against only Mr. Craft and proceeded to lodge new and different charges against Mr. Craft. After three years and ten months the government added two new counts with new and distinct elements and defense from the other charges in the prior indictments.

Furthermore, the new charges against Mr. Craft came about only after he asserted his constitutional due process rights and challenged the ethnic make-up of the jury panel drawn for trial on April 24, 2023.

Not only did the government bring up these charges after Mr. Craft asserted a protected constitutional right, the government failed to charge any of the other residents at the Best Choice Inn with similar offenses even though they engaged in the exact same alleged conduct. Dozens of residents at the Best Choice Inn possessed the same illegal substances on June 19, 2019, allegedly possessed by Mr. Craft. Further, several of the residents possessed firearms along with those illegal substances on June 19, 2019.

Thus, despite its representations to the Court, the government has caused the need for significant additional litigation on the following non-exhaustive list of issues:

1. Motion to Dismiss Counts 11 and 12 for Vindictive Prosecution.
2. Motion to Dismiss Counts 11 and 12 for Selective Prosecution.
3. Motion to Strike Untimely Disclosure of Expert Testimony. Fed. R. Crim. P. 16.

Additionally, despite its representations to the Court and counsel, the government has caused the need for additional defense investigation and the potential retention of an expert to rebut the newly disclosed topics of testimony of its drug trafficking expert.

The government has caused this delay and the government is responsible for any further delay in this trial and any violation of Mr. Craft's speedy trial rights. Mr. Craft does not agree to any continuance of the current trial setting. Accordingly, Mr. Craft asserts his right to a speedy trial and asks that the Court deny the government's request to sever the charges in counts 11 and 12. Mr. Craft's motions to dismiss as outlined above will be filed in due course.

Respectfully Submitted,

BURGESS & PORTER LAW, LLC

*/s/ **Barrett (Barry) G. Porter***

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